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*Attorneys for Plaintiff ComicBookMovie.com*

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IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF UTAH

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BEST LITTLE SITES, LLC, a Utah limited  
liability company, d/b/a  
COMICBOOKMOVIE.COM,

Plaintiff,

v.

GREAT BOWERY, INC., d/b/a TRUNK  
ARCHIVE,

Defendant.

**PLAINTIFFS' ANSWER TO  
COUNTERCLAIM**

Case No. 2:19-cv-00319

Magistrate Judge: Dustin B. Pead

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GREAT BOWERY, d/b/a TRUNK ARCHIVE,

Counterclaim Plaintiff,

v.

BEST LITTLE SITES, d/b/a  
COMICBOOKMOVIE.COM, and DOES 1  
through 10, inclusive,

Counterclaim Defendants.

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Plaintiff and Counterclaim Defendants Best Little Sites, d/b/a ComicBookMovie.com (“CBM”), by its attorneys, hereby answers the allegations set forth in the Counterclaim and asserts its affirmative defenses. Respondent denies each allegation in the Petition unless expressly admitted.

1. Paragraph 1 does not set forth any allegation that requires a response.
2. Admitted.
3. Admitted.
4. Denied.
5. Paragraph 5 does not set forth any allegation that requires a response.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

### **FACTUAL BACKGROUND**

#### **Trunk Archive**

10. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Counterclaim and therefore, denies the same.

11. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Counterclaim and therefore, denies the same.

12. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Counterclaim and therefore, denies the same.

13. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Counterclaim and therefore, denies the same.

14. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Counterclaim and therefore, denies the same.

15. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Counterclaim and therefore, denies the same.

16. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Counterclaim and therefore, denies the same, except that paragraph 16 refers to Exhibit A.

17. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Counterclaim and therefore, denies the same.

18. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Counterclaim and therefore, denies the same.

19. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Counterclaim and therefore, denies the same.

20. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Counterclaim and therefore, denies the same.

21. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Counterclaim and therefore, denies the same.

**www.ComicBookMovie.com**

22. Admitted.

23. Admitted.

24. Denied.

25. Admitted.

- 26. Admitted.
- 27. Admitted
- 28. Denied.
- 29. Denied.
- 30. Admitted.
- 31. Admitted.
- 32. Denied.
- 33. Paragraph 33 does not set forth any allegation that requires a response.
- 34. Admitted.
- 35. Denied.

**CBM's Allegedly Infringing Conduct**

36. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Counterclaim and therefore, denies the same.

37. Admitted in part but denied that the article is an “infringing” article.

38. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Counterclaim and therefore, denies the same.

39. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Counterclaim and therefore, denies the same.

40. Admitted.

41. Admitted.

42. Admitted.

43. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Counterclaim and therefore, denies the same.

44. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Counterclaim and therefore, denies the same, except that the Counterclaim refers to Exhibit H.

45. Denied.

46. Denied.

47. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Counterclaim and therefore, denies the same.

48. Denied.

49. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Counterclaim and therefore, denies the same.

50. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Counterclaim and therefore, denies the same, except that the Counterclaim refers to Exhibit I.

51. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Counterclaim and therefore, denies the same.

**FIRST COUNTERCLAIM**  
**COPYRIGHT INFRINGEMENT**  
**17 U.S.C. § 101 *et seq.***

52. CBM incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

53. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Counterclaim and therefore, denies the same.

54. CBM is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Counterclaim and therefore, denies the same.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

**PRAYER FOR RELIEF**

1. Denied,

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

1. Except as expressly admitted herein above, CBM denies generally and specifically, each and every allegation set forth in the Counterclaim, including all allegations contained in the separate Prayer for Relief and any of the underlying factual assumptions or assertions made in any allegation that is hereby denied.

**SECOND AFFIRMATIVE DEFENSE**

2. Trunk Archive failed to state cognizable claims for which relief can be granted and its claims should be dismissed for that reason.

**THIRD AFFIRMATIVE DEFENSE**

3. Some or all of Trunk Archive's asserted claims are barred because there is no damage which stems directly or indirectly from any conduct complained of in the Counterclaim.

**FOURTH AFFIRMATIVE DEFENSE**

4. Some or all of Trunk Archive's asserted claims are barred because they run contrary to public policy.

**FIFTH AFFIRMATIVE DEFENSE**

5. Some or all of Trunk Archive's asserted claims are barred by Trunk Archive's failure to mitigate damages (should any damages exist).

**SIXTH AFFIRMATIVE DEFENSE**

6. Some or all of Trunk Archive's asserted claims are barred by the DMCA Safe Harbor because CBM is a service provider immune from monetary liability and injunctive relief.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Some or all of Trunk Archive's asserted claims are barred by the DMCA Safe Harbor because the photographs at issue were posted at the direction of a user.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Some or all of Trunk Archive's asserted claims are barred because CBM did not have actual knowledge of the alleged infringement of knowledge of facts or circumstances from which infringing activity is apparent.

**NINTH AFFIRMATIVE DEFENSE**

9. Some or all of Trunk Archive's asserted claims are barred because CBM acted expeditiously to remove and/or disable access to the photographs at issue upon obtaining knowledge or awareness of the alleged infringement.

**TENTH AFFIRMATIVE DEFENSE**

10. Some or all of Trunk Archive's asserted claims are barred because Trunk Archive did not submit a compliant DMCA take-down notice in connection to the photographs at issue.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Some or all of Trunk Archive's asserted claims are barred because the photographs at issue were not stored and/or did not reside on a system or network controlled or operated by CBM.

**TWELFTH AFFIRMATIVE DEFENSE**

12. Some or all of Trunk Archive's asserted claims are barred because the alleged damages, if any, were proximately caused by act or omissions, negligence, or intentional acts by third parties over whom CBM had no control or right of control or, if CBM had any right of control,



were acting beyond the scope of any relationship with CBM, or such damages were caused by conditions or events over which CBM had no control or right of control.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. Some or all of Trunk Archive's asserted claims are barred because of Plaintiff's own bad faith or unlawful actions.

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. Some or all of Trunk Archive's asserted claims are barred under the doctrine of unjust enrichment.

**FIFTEENTH AFFIRMATIVE DEFENSE**

15. Some or all of Trunk Archive's asserted claims are barred because by the doctrine of avoidable consequences.

**SIXTEENTH AFFIRMATIVE DEFENSE**

16. Some or all of Trunk Archive's asserted claims are barred under the doctrine of unclean hands.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Some or all of Trunk Archive's asserted claims are barred because CBM acted in good faith and was justified in each of its actions.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Some or all of Trunk Archive's asserted claims are barred because Trunk Archive inflicted its own harm and through its acts or omissions was the sole cause or the proximate cause of the damages complained thereof.

**RESERVATION OF DEFENSES**

19. CBM hereby reserves its right to add any further affirmative defenses that may come to fruition as a result of discovery.

DATED: August 2, 2019

PIA ANDERSON MOSS HOYT

/s/ Robert E. Aycock

Robert E. Aycock

William B. Chadwick

*Attorneys for Plaintiff and Counterclaim Defendant  
ComicBookMovie.com*

**CERTIFICATE OF SERVICE**

I hereby certify that an original copy of the foregoing **ANSWER TO COUNTERCLAIM** was transmitted online on August 2, 2019 through the Court's website and was served through the Court's CM/ECF notification system by email on counsel of record.

/s/ William B. Chadwick